THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 8712 of 2005

DATED:30-08-2005

Between:

St. Joseph's Educational Society, Kurnool, rep. by its Secretary and Treasurer,

Smt. C. Rojamma,W/o. Late Chittaranjan.

..... PETITIONER

AND

1 The District Collector, Kurnool District.
2 The Revenue Divisional Officer, Kurnool.
3 The Mandal Revenue Officer, Kurnool.

.....RESPONDENT(S)

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.NO.8712 OF 2005

ORDER:

This writ petition has been filed by the St.Joseph's Educational Society, Kurnool, represented by its Secretary and Teasurer,Smt.C.Rojamma with a prayer to declare the proceedings Roc.No.1295/04 dated 13.4.2005 issued by the Revenue Divisional Officer, Kurnool as illegal, arbitrary and unjust.

2. The case of the petitioner as set out in the affidavit filed in support of the writ petition be sum up in brief as follows:

The petitioner is a society registered under Societies Registration Act, bearing registration No.19/1967. One K.Lakshman Rao Naidu was possessor of the land bearing Survey No.140/2A, admeasuring Ac.1-25 cents. The Tahsildar, Kurnool, filed O.P. No.107 of 1984 on the file of the District Judge-cum-Special Tribunal under the A.P.Land Grabbing (Prohibition) Act to declare the said

K.Lakshman Rao Naidu as land grabber regarding the said extent of land. The said petition was filed on the ground that the land was classified as Village Site Poramboke. Pending the said O.P., K.Lakshman Rao Naidu died and his legal representatives, namely, Koka Padmanabha Rao, Koka Venkateswar Rao and Kum. Koka Janaki were brought on record. Ultimately, the O.P. filed by the Tahsildar ended in dismissal by a judgment dated 31-8-1989. The petitioner Society purchased the land bearing Survey No.140/2A admeasuring Ac.1.25cents under registered sale deed dated 5-3-2004. Thereafter, the petitioner society made an application dated 6-7-2004 to Kurnool Municipal Corporation, Kurnool, seeking permission for construction of building . The Mandal Revenue Officer, Kurnool, issued a certificate dated 19-06-2004 stating that the land in revenue records has been classified as village site and the same has been purchased by Smt.C.Rojamma in the name of St.Joseph's Educational Society, Kurnool vide document No. 2439/2004 from Kumari Koka Janaki D/o.K.Lakshman Rao Naidu and Sri K.Venkateswara Rao who are owners and pattedars of above Survey No.140/2A. The said certificate came to be cancelled by the Revenue Divisional Office, Kurnool. While cancelling the certificate, the Revenue Divisional Officer directed the Mandal Revenue Officer to take possession of the land. Hence, this writ petition.

3. The respondent filed counter affidavit. One Vikas Raj has sworn to the counter affidavit. It is stated in the counter affidavit that the Mandal Revenue Officer is not competent to issue 'no objection certificate'. Therefore, the certificate issued by the Mandal Revenue Officer came to be cancelled by the proceedings impugned in the writ petition. I deem it appropriate to refer Para No.6 of the counter affidavit and it is thus:

> It is pertinent to mention there that discrete enquiry reveals that the encroacher late K.Lakshman Rao Naidu is a retired Assistant Engineer, Electricity Department. His father late K.Padmanabha Rao had worked as Tahsildar in Revenue Department in Kurnool District. Being a retired official and his father being a retired Tahsildar he had encroached the vacant Government land (V.S.P.) to an extent of Ac.1.25 with an ulterior motive to knock away the government property by unauthorized encroachments. His daughter

Koka Janaki also a Government Employee who worked as Lecturer in K.V.R.Government Degree College, Kurnool who is no more. Hence, the encroachment made by the rich and retired Government employees do not confer any right over the Government land of Ac.1.25 and as such the encroachment made by the Government officials amounts to gross violation of rules and against the principles of natural justice. Further it is learnt that late K.Lakshman Rao left with the following family members as unmarried.

1)K.Padmanabha Rao s/o.late K.Lakshman Rao Naidu (died)

2)Koka Janaki,Retired Lecturer d/o.late K.Lakshman Rao Naidu (died)

3)K.Venkateswara Rao s/o.late K.Lakshman Rao Naidu (alive)

It is submitted that petitioner will not acquire any better right than that of his vendor. The writ petition is devoid of merits.

Hence, it is prayed that this Hon'ble Court may be pleased to vacate the interim order, dated 19.4.2005 granted in WPMP.No.11526/05 in W.P.No.871/05 and dismiss the writ petition with costs.

4. Reply affidavit has been filed by the petitioner society. It is stated in the reply affidavit that the predecessor-in-title had been in possession of the land from time immemorial and the question of taking possession from the petitioner society under the guise of cancellation of possession certificate issued by the third respondent does not arise.

5. Heard the learned counsel for the petitioner and the learned Government Pleader for Assignment appearing for the respondents.

6. This case has a chequred history. The Tahsildar, Kurnool, initiated proceedings under Land Grabbing Act against K.Lakshman Rao Naidu alleging that K.Lakshman Rao Naidu, grabbed an extent of Ac.1.25 cents in Survey No.140/2A of Kurnool Village which is Village Site Poromboke in the village accounts. K.Lakshman Rao Naidu died pending O.P. and his legal representatives came on record in the land grabbing case. The Special Tribunal under the A.P.Land Grabbing (Prohibnition) Act, on appreciation of the evidence brought on record and hearing counsel for both

parties, dismissed the O.P. by judgment dated 31-8-1989.The relevant portion in Para No. 9 of the judgment needs to be noted and it is thus:

> ”In the decision of our own High Court reported in THE SPECIAL DEPUTY COLLECTOR VS.KONDA LAKSHMAN BAPU (1984 (1) ANDHRA PRADESH LAW JOURNAL 10 (Short Notes) which was also a case dealing with the provisions of A.P.Land Encroachment Act it is observed by their lordships that in as much as the occupation of the property by the petitioners there in was open and for an appreciable length of time, it can be taken that the petitioners are prima facie having a bonafide claim to the property requiring an impartial adjudication according to the established procedure of law and that since there is a bonafide dispute of title between the Government and the petitioners, it must be adjudicated upon by the ordinary courts of law and that the Government cannot decide such question unilaterally in its own favour and evict them summarily on such basis. In a recent decision of our High Court reported in S.PEDDA SUBBAIAH SASTRY VS. JOINT COMMISSIONER FOR ENDOWMENTS (1988 (2) ANDHRA LAW TIMES 181) .It is observed by His Lordship that the very concept of encroachment postulates that a person remaining in possession has no pre-existing right, or interest in or title to the lands or buildings and that the petitioner therein having been in un-interrupted and continuous possession and enjoyment for over 12 years from the date of the sale in his favour, even if the person who alienated the property had no title thereto, the petitioner must be held to have perfected his title by adverse possession and that having thus acquired title, by no stretch of imagination can he be considered as an ‘encroacher’. In the present case also, as already revealed above, the respondents and their predecessors alone have been in exclusive possession and enjoyment of the disputed land in their own right since times immemorial. Therefore, the respondents in the present O.Ps cannot be considered as ‘Land grabbers’ as contemplated under the A.P.Land Grabbing (Prohibition) Act and they cannot be directed to

pay and compensation to the Government for being in such possession of the disputed land."

7. The order passed by the Land Grabbing (Prohibition) Court reached finality since the Government did not choose to question the same and it can be said without any controversy that K.Lakshman Rao Naidu was held to be in possession of the property over a statutory period and he could not be considered as encroacher. The petitioner society claimed that it purchased property from the legal representatives of the K.Lakshman Rao Naidu under the registered document. The Revenue Divisional Officer while setting aside the possession certificate proceeded to order for restoration of the possession in spite of the fact that a specific finding had been recorded by the Land Grabbing (Prohibition) Court that K.Lakshman Rao was not an encroacher and he was in possession over a statutory period. The recourse resorted by the Revenue Divisional Officer in ordering restoration is not in accordance with the law and the same is liable to be set-aside. With regard to possession certificate, a serious contention has been raised by the Government Pleader for Assignment appearing for the respondents that the Mandal Revenue Officer is not competent to issue such certificate. Relevance has been made in G.O.Ms.No.546 Rev. (Ass-1) Department dated 30-06-1997.

8. The learned counsel appearing for the petitioner submitted that the G.O. referred does not relate to private lands and it relates to only Government lands. The question as to whether G.O. cited above refers to Government lands or private lands need not be required to be examined in this case, since the petitioner is not relying the possession certificate issued by the Mandal Revenue officer. Such is the case, the cancellation of the possession certificate issued by the Mandal Revenue Officer does not in any way prejudice the rights of the petitioner society. A clarification is required to be given at this juncture that the petitioner is claiming right over the property through legal representatives of K.Lakshman Rao Naidu, who was found in possession of the property over a statutory period in the land grabbing case initiated by the Government.

9. Accordingly, the writ petition is allowed setting aside the impugned order dated 13-4-2005 as well as possession certificate issued by the Mandal Revenue Officer. No order as to costs.

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B.SESHASAYANA REDDY,J

30-08-2005

Stp